

S.B.Civil Second Appeal No.165/2004

Smt. Kamla Devi vs. State of Rajasthan & Anr.

Date : 3.8.2005

HON'BLE MR. PRAKASH TATIA, J.

Mr. Vineet Jain, for the appellant.

Mr. SL Jain, for the respondent.

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Heard learned counsel for the parties.

Though this appeal has been filed as regular second appeal but in fact it is a misc. appeal under Clause (4) of Rule 1 of Order 43 CPC but since the appellant is seeking permission to withdraw the suit itself, therefore, this second appeal is treated as misc. appeal.

Learned counsel for the appellant submits that unfortunately the appellant's husband expired and the appellant was advised to file a civil suit for getting the family pension and, therefore, she filed the suit and the trial court decreed the suit of the plaintiff on 30.7.2003. Two appeals were preferred one by State of Rajasthan and another by U.I.T., Bikaner and both the appeals were decided by the first appellate court vide judgment and decree dated 28.1.2004. The appellate court remanded the matter to the trial court on the ground that the trial court should have first decided the issue whether the civil court has jurisdiction to grant any decree in the matter of

pension. Hence, the present appeal has been preferred by the plaintiff against the order of remand dated 28.1.2004.

Learned counsel for the appellant submits that the appellant may be permitted to withdraw the suit in view of the bar against filing a civil suit for getting pensionary benefits and particularly, family pension so that the appellant may prefer writ petition before this Court.

Learned counsel for the respondent UIT submits that the claim of pension against U.I.T., Bikaner is not sustainable.

In view of the fact that the appellant wants to withdraw the suit and wants to file the writ petition for getting the pensionary benefits and in view of the fact that the first appellate court also remanded the matter back to the trial court to decide the question of jurisdiction of the civil court. Therefore, it will be just and proper to permit the plaintiff to withdraw the suit so as to file writ petition for getting the relief in accordance with law from the appropriate forum. The respondent may raise all objections about entitlement of the plaintiff for family pension etc. before that forum.

There appears to be no reason to deny such relief of withdrawal of the suit to the plaintiff as the defendants cannot claim accrual of any right in their favour in a matter of pension which the plaintiff may prove.

In view of the above, the suit of the plaintiff is

dismissed as withdrawn. Consequently, this appeal is also dismissed with liberty to the appellant to avail the remedy for the same relief.

(PRAKASH TATIA), J.

S.Phophaliya